## APPENDIX A–1

SUPREME COURT OF LOUISIANA
OFFICE OF THE CLERK
301 Loyola Ave.
New Orleans, Louisiana 70112

Dear Counsel:

Attached you will find a copy of the opinion in a case in which you are counsel. The judgment in this case will become final at the expiration of fourteen (14) days from the date appearing on the first page of the opinion unless an application for rehearing is filed within the delay provided and in conformity with the provisions of Rule IX of the Supreme Court, as revised and amended.

Sincerely yours,

Frans J. Labranche, Jr.
Clerk of Court

SUPREME COURT OF LOUISIANA

NO. 81-KA-1940

STATE OF LOUISIANA
V.
RONALD CAMINITA

Appeal from the Criminal District Court,
Parish of Orleans,
Honorable Rudolph Becker, III, Judge

March 1, 1982

SAVOIE: JUSTICE AD HOC*

On October 26, 1979, defendant was charged by bill of information with the armed robbery of a Ground Pati Restaurant employee in New Orleans. Subsequently, defendant entered a plea of not guilty to that charge. Two motions to suppress were filed prior to trial by defendant's counsel. A motion to suppress the evidence was denied by the trial court on January 25, 1980. The motion to suppress defendant's confession was taken under advisement and granted on January 29, 1980.

Pursuant to an alleged plea-barain, defendant appeared before the court on March 6, 1980, withdrew his former plea of not guilty and tendered a plea of guilty to simple robbery. The State objected to this plea as unacceptable. Immediately thereafter, defendant filed a motion to quash

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* Judges Shortess, Carter and Savoie of the Court of Appeal, First Circuit, participated in this decision as associate justices ad hoc, joined by Chief Justice Dixon, joined by Associate Justice Calogero, Marcus and Dennis.

the bill of information based on the state's alleged non-compliance with their previous plea-bargain agreement. The trial court denied this motion despite defendant's objection. Defense counsel notified the trial judge of his intention to take writs to this Court. A thrity-minute delay was given to defendant to attempt this application for writs and a stay order. The application was denied by this Court. The trial judge continued the trial date and set it for March 11, 1980. Trial began on that date and resulted in a jury verdict of guilty as charged. Subsequently, defendant filed a motion for a new trial which was denied by the trial court on June 13, 1980. On that same date, the trial court sentenced defendant to a term of five (5) years imprisonment at hard labor.

The facts of this case show that on October 23, 1979, at approximately 2:30 A. M., an employee of the Ground Pati Restaurant opened the locked rear door of the building to take out the trash. As he was walking back to the building, he heard noises in the hedges. When he looked in that direction, two boys armed with a knife and a gun rushed at him and ordered him to open the door. Since the door was locked from the inside, the employee had to knock on the door to get the manager, Jerry Roszezynialski, to open it. When Mr. Roszezynialski opened the door, all three persons entered the restaurant. The two armed robbers put the employee, Mr. Minor, in the cooler. Holding a gun on Mr. Roszezynialski, they ordered him to open the safe. After the safe was opened, one boy grabbed a female employee's purse and stuffed the money into it. With this accomplished, the robbers placed Mr. Roszeznialski in the cooler and fled.

While all of this was happening, a young female employee of the restaurant ran out of the front door and across the street to the Tastee Donut Shop where two policemen were sitting in their unit. She informed them that "Ronnie was

robbing the Ground Pati". When the officers arrived on the scene, the perpetrators had fled. On the ground in the rear of the building they found two stocking masks worn by the robbers and several coins taken from the restaurant.

The perpetrators were described by the witnesses as one black youth and one white youth, both wearing stocking masks. The young white man was described as 5' 7" or 5' 8", stocky build, wearing white bluejean pants and a yellow shirt. Katheryn Alderman, the female employee who notified the police officers, testified that she recognized the white youth as defendant, Ronald Caminita, an ex-employee of the restaurant. Another employee, Peggy Austin, also recognized defendant as one of the perpetrators.

Subsequently, defendant was arrested and charged with armed robbery.

The defendant appeals his conviction on two assignments of error:

1. The trial court erred in failing to grant the defense's motion to quash on the grounds that the State had failed to honor a plea-bargain agreement.

2. The verdict was contrary to the law and the evidence.

ASSIGNMENT OF ERROR NO. 1

The trial court erred in failing to grant the defense's motion to quash on the grounds that the State had failed to honor a plea-bargain agreement.

Soon after learning of the arrest of Caminita on a charge of armed robbery, and after being retained by the family as defense counsel, attorney Frank Uddo began making energetic efforts to persuade the Orleans Parish District Attorney's office to permit his client to enter a plea of guilty in return

for concessions on the eventual sentence. He spoke to at least three attorneys employed by the District Attorney's office, including District Attorney Harry Connick. The parties here give radically inconsistent accounts of these conversations. Mr. Uddo says that a conversation between himself and Chief of Trials, Joseph Meyer, which took place during a chance meeting in a restaurant, ended with a handshake between the two, confirming Meyer's promise to accept a guilty plea to simple (rather than "armed") robbery, which would carry a relatively short jail sentence, that could be served locally rather than at the State Penitentiary. Uddo says that in his earlier conversation with Mr. Connick, Connick had said that he would make no deal on the case since it was not his direct responsibility, but that he would support whatever decision was made by his subordinates. Connick maintains that he told Uddo no deal was possible at all.

Chief of Trials, Meyer, denies promising to reduce the charge against Caminita and complains, too, that Mr. Uddo deceived him by saying that such a deal would be acceptable to District Attorney, Connick.

At any rate, during a telephone conversation next morning between Meyer and Uddo, Uddo was apprised that Meyer would not reduce the charges against Caminita. Uddo asserted Caminita's right to specific performance of the plea-bargain before the trial court, but, after hearing evidence, the trial judge held that whether or not the elements of a binding contract, under the civil law, were present, the District Attorney's office was free to withdraw its promise so long as the defendant had not suffered prejudice to his substantial rights by reliance on the promise. Finding no detrimental reliance, the court refused to compel adherence to the alleged agreement. We think the ruling was correct.

This is not the first time that this court has been presented

with an insistence by a criminal defendant on the right to specific performance of a plea bargain agreement. In State v. Nall, 379 So.2d 731 (La. 1980), the prosecuting attorney promised to reduce the charges against an accused in return for the accused's testimony against his co-defendant. However, the statement given by the accused in fulfillment of his part of the bargain was completely different from what the prosecutor had been led to expect, so the prosecutor refused to be bound by his promise. Justice Blanche, writing for the majority of this court, analyzed the case under principles of the civil law of obligations, finding the plea-bargain agreement void for lack of cause on account of the defendant's misrepresentation of what his testimony would be. Justice Dennis, concurring, stated that the case turned on the constitutional guarantee of fundamental fairness contained in the Due Process Clause of the 14th amendment, and warned against excessive attention to the niceties of contract law in this context, citing *Cooper v. United States*, 594 F.2d 12 (4th Cir. 1979).

We do not read Nall as revealing any real difference of opinion among the members of this court on this point. Justice Dennis' concurrence merely points up what is implicit in the majority opinion, that the traditional law of contracts guides educated expectations of fairness in any negotiation and can be useful by analogy in weighing claims of denial of due process in plea negotiations. Certainly, if we confined ourselves to contract principles in this case, we might deny enforcement of the alleged agreement on the grounds that a plea bargain is a type of "Transaction and Compromise" which our Civil Code requires to be in writing; CC art. 3071.

But the real question is whether Ronald Caminita has been dealt with in a manner so fundamentally unfair that it "shocks the (judicial) conscience". For purposes of this analysis, we take the defendant's version of the facts as true,

since the trial judge made no fact-findings but rather found as a matter of law that the defense was not entitled to enforce the agreement even on the supposition that a promise was made.

The United States Fourth Circuit Court of Appeal has held on very similar facts, in the *Cooper* case, cited above, that the government cannot withdraw its consent to a plea-bargain, once made, when a higher-up in the prosecutor's office disagrees with the judgment of the attorney who struck the deal. *Cooper* is the only case in any jurisdiction to so hold and we reject its rationale. Absent any showing of detrimental reliance prejudicial to the substantial rights of the accused, or evidence of devious practice by the government such as bad-faith negotiation designed to psychologically probe the defense or gain some other improper advantage, the government remains free to withdraw from a plea agreement up to the time the plea is entered. The only detriment claimed by the defense here is that Mr. Caminita's hopes were raised when he was informed of the unsuccessful plea negotiation, then dashed when he was informed that the District Attorney had allegedly over-ruled his subordinate and repudiated the deal.

This is not enough to render the proceedings unconstitutionally unfair. We approve the reasoning of Judge Everett in U.S. V. Kazena, 11 M. J. Reporter 28 (Military App. 1081):

> "When an accused has demonstrated detrimental reliance on a plea-bargain, for example, by failure to call witnesses as to guilt or innocence who might otherwise have been available, I would enforce the plea-bargain. Virgin Islands v. Scotland, (cite). Conceivably, some other situations will reveal such 'unfairness' on the part of

the convening authority in connection with a plea-bargain that performance by the Government should also be compelled. Cf. Cooper v. United States, (cite) In the case at bar, there is no indication of detrimental reliance by the appellant, nor of unfairness on the convening authority's part. Therefore, despite the absence from the pre-trial agreement of any provision purporting to allow the convening authority to withdraw from the agreement, he was free to do so until the plea of guilty had been accepted."

ASSIGNMENT OF ERROR NO. 2

The verdict was contrary to the law and the evidence.

Caminita was convicted of holding up a restaurant at which he had previously been employed. He wore a nylon stocking over his head during the commission of the crime but two waitresses who had been employed along with him testified positively that they recognized him instantly and had no doubt at all that he was the robber.

From the record, it is apparent that the State presented adequate evidence by which the jury could find the defendant guilty beyond a reasonable doubt.

This Court's review of a trial court's denial of a new trial motion based on the assertion that the verdict is contrary to the law and the evidence is limited to the question of whether the trial judge has properly exercised his wide discretion. La. C. Cr.P. Art. 851; State v. Turner, 365 So.2d 1352, 1355 (La. 1978). It does not appear that the trial judge in this case violated that discretion.

For the above and foregoing reasons, the conviction and

sentence are affirmed.

AFFIRMED.

## APPENDIX A–2

## CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

**STATE OF LOUISIANA**

**VERSUS**

**RONALD CAMINITA**

**NUMBER 272-902 "E"**

Ruling of Judge Randolph F. Becker, III, as excerpted from pages 44–51 of the Transcript of proceedings held in the above numbered and entitled matter on March 6, 1980, the Honorable Rudolph F. Becker, III, Judge, presiding.

[44] address a point testified to by the movers.

BY THE DEFENSE:

Of course, in response to that, Your Honor - - the only response I have, Your Honor, is that what was brought up - - and I'm certain what Mr. Connick will try to refute - - was brought up originally on direct and they had an opportunity to put him on. I think it's too late and the door's shut. Again, I'd note my objection.

BY THE STATE:

Your Honor, the State has nothing else.

BY THE COURT:

Alright. Your objection's overruled. Gentlemen, is the matter submitted or is there any argument?

BY THE DEFENSE:

Your Honor, I'll submit the matter on the testimony before the court.

BY THE STATE:

Submitted.

BY THE COURT:

Mr. Garcia, the only thing I can say with regard to the conversation - - whether it was a misunderstanding or whether a deal was actually culminated with regard to the incident at the steak place - - Chris's Steak House - - I don't know of any law that would allow a superior not to cancel - - let's put it this way - - a superior not [45] to be - - if a deal had been made and I'm not going into whether one had been made or not - - I have no doubt that counsel believed that a deal was made - - whether it had actually been made or whether it was only his thought that a deal had been made - - but I know of no law that does not allow a superior or even the district attorney of the Parish of Orleans, or any other parish, to withdraw any plea bargain agreement prior to the culmination of the plea bargain agreement. It's entirely, as I understand the law, within his the discretion and, of course, if a plea bargain had been made, I know of no law that - - by a subordinate - - that would not allow the district attorney for Orleans Parish or his first assistant to set aside that agreement and reinstitute the proceedings.

BY THE DEFENSE:

Your Honor, If I may, there are cases that specifically say that when the district attorney definitely imparts

the fact that he has the authority to enter into a plea bargain and a plea bargain is actually arrived at, then that is binding. The procedure through which the redress is obtained is through a motion to quash. Now, unfortunately, - - now, I've handled one of these before and [46] I won this point once before and, unfortunately I don't have the law with me at this moment.

BY THE COURT:

But the district attorney did not enter into a plea bargain.

BY THE DEFENSE:

Your Honor, I think that the facts are pretty clear that Mr. Myers did, number one, hold himself out to have the authority to enter into the deal and, of course, it depends on how you weigh the testimony. I think it's been adequately illustrated that the idea or the whole concept of a deal was made. That was the idea. There was a negotiation going on that culminated in a deal and, like I said, you've got to weigh the facts, but I believe that it shows that. Now, if that is the case, the deal that was made is binding. I hate to use an analogy to a civil situation, but you have an offer and acceptance - - you have a contract - - and that's what we had here. We had a negotiation. We had a culmination with a deal. We all walked away with the intention of pleading to a simple robbery and I don't think anybody can tell me that when we walked away from that table that night that there was anything different in anybody's mind. Specifically, the terms - - I don't care if [47] he serves fifteen days - - no, we've got to get a year - - well, they said, Just so long as we have a plea with jail time, fine. We've got a deal. Shake hands and walk away from the table. Good. I'll buy you all a drink. We've got a deal. I walked away. As a

matter of fact, Mr. Myers and the lady left and Mr. Plavnicky was left at the table after that and I had even invited him to come to my table after that time to talk about times for setting up the plea. And there is law and I feel almost naked standing before the court without having that law in my hand right now, but there's a law to that effect.

BY THE STATE:

Your Honor, I would point out that I think Mr. Uddo is certainly correct that there is law in the area of plea bargaining, but the . . .

BY THE COURT:

Of course. That's not my point.

BY THE STATE:

What I was going to say, Your Honor - - I don't have the name of the case right now, but there's a case in the January slips which discusses this very issue as to what Mr. Uddo has said - - the contractual obligation. They even look to the Civil Code, but the cases that do exist in the law, as I appreciate [48] the law, Your Honor, involve situations where a case has been reduced in return for a witness's testimony for the State or something like this and that's not the nature of this - - if there was, as you say, an agreement, which the State, of course, denies. . .

BY THE COURT:

Certainly, there's a plea bargain agreement, if it's entered into validly - - that plea bargain agreement must be kept if the consideration is fulfilled, to-wit, a defendant

testifies against his co-defendant for a plea to a reduced charge and the district attorney does not reduce the plea until after the testimony and then he says, Ha, ha. too late. We're not going to reduce your plea. They're bound by that. But that's not what happened here and that's my point with regard to the law. I don't believe there is any law that says the district attorney or a superior cannot cancel an agreement made with a subordinate.

BY THE DEFENSE:

Your Honor, if I may, in a case of this nature when you get into an active negotiation for plea bargaining and all the parties have the mental assent of having the plea bargain arrived at and, specifically, defense [49] counsel has the idea that he has a plea bargain, you then abandon the necessity of trying to put together a case. The defense will suffer as a result of it. In any case of this nature when a deal is struck the lawyer has to feel that by and large his job is done and I will be honest with you - - that's the feeling that I had - - that's the feeling that he had and that's what we came into court today specifically with the idea of pleading to a lesser offense. We felt that we had the right to the plea, through this argument, regardless, and I feel that the case that I did this on previously I can remember the d. a. was Clyde Merritt in Judge Oser's court and we brought it - - I've been racking my brain for the name of the defendant in the case, but I can't come up with it. The situation was we had discussed a plea bargain just like this. The judge was aware of the fact that we had discussed a plea bargain, although he did not participate, nor did he make any commitments about anything and at the last minute the bargain was reduced - - I don't remember exactly what the situation was - - but at that moment Judge Oser allowed him to proceed

with the case. I took a writ to the Supreme Court [50] and the Supreme Court upheld it. It said a bargain was struck and it was improper to proceed after that point. One of the reasons that I got messed up in that case was because I didn't file my motion to quash timely, but in this case the motion to quash is properly filed and it is the proper vehicle through which this is to be considered.

BY THE COURT:

Mr. Uddo, I have no doubt in my mind - - in fact, I've sent you down with Mr. Plavnicky to speak to Mr. Connick or Mr. Capitelli on several occasions. I know you've been attempting a plea bargain with the district attorney, I'm faced really with two things here, as I see it. One, whether a plea bargain agreement was made or whether discussion of a plea bargain agreement and you, in your mind, felt that a deal had been consummated or, two, whether if a plea bargain agreement had been made by a subordinate - - whether that plea bargain agreement could be cancelled by a superior. Now, I've got Mr. Capitelli's testimony that he at one point - - at least at one point - - had denied the reduction to you and then your testimony with regard to your speaking with Mr. Connick that it was up to the [51] trial assistant or whatever and further testimony from Mr. Myers that since you had spoken to Mr. Connick that he would have to check with Mr. Connick before he could actually consummate, I take it, the plea bargain agreement and as a result it was not consummated. My point being that I really feel that if a subordinate had made a plea bargain agreement and a superior - - more particularly, the district attorney - - could cancel that plea bargain agreement without any detriment to the defendant. I'll be glad to take a look at your case. Mr. Chester, I think the case you're speak-

ing of deals with more or less a contract.

BY THE STATE:

Correct. One was a plea to manslaughter in return for the testimony at trial.

BY THE COURT:

I'm well aware of the situation, but that's not the situation here. I'll take the matter under advisement, if you desire, Mr. Uddo, for fifteen minutes. You can use the district attorney's library downstairs. I'll be truthful with you - - I'm really of the opinion that a superior can cancel a plea bargain agreement.

BY THE DEFENSE:

Fifteen minutes would put us under a terrific